

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

GEORGE YARID,

Plaintiff,

versus

3:16 CV 756

SHON BRENNAN,

Defendant

Before: HONORABLE JOHN A. GIBNEY, JR.
United's States District Judge

January 9, 2019

Richmond, Virginia

RULING FROM THE BENCH

GILBERT F. HALASZ
Official Court Reporter
U. S. Courthouse
701 East Broad Street
Richmond, VA 23219

APPEARANCES

George Yarid, pro se

1 THE COURT: Okay.

2 Well, I kind of outlined the elements of this, the
3 claim here. I will now make my ruling.

4 Mr. Yarid has copyrighted a number of his programs
5 under registration number "P," as in Paul. "A," as in a
6 Adrian, "U," as in university, 00369089. That program,
7 that copyright, which issued on 16 August 2013, it is not
8 entirely clear to me whether all the programs are
9 encompassed in the registration, but certainly a number of
10 them are.

11 The next question, once we have a copyright, I will
12 assume for the purposes of my ruling today that
13 Mr. Yarid's works that are copied by Brennan are
14 copyrighted. The next question then is whether Brennan
15 copied parts of the work that are original. The answer
16 is, yes. He pretty much admitted that in his answer. As
17 we look at the various -- Brian, thank you very much. You
18 can go back to work if you want or stay and hear the rest
19 of today's proceedings -- we have a number of programs
20 that were in essence taken by Mr. Brennan, and had
21 comments added to them, had alterations made to them by
22 showing in slow motion, by adding pictures and so forth to
23 them, that are, I think, within the meaning of the
24 copyright law transformed. Let me just say that what
25 Mr. Brennan did in this case is pretty abhorrent.

1 Mr. Yarid's program, as I observed, is not Masterpiece
2 Theater, but it is also -- it doesn't deserve to have
3 homophobic and racist remarks imposed on it. One of the
4 problems with being a public figure is that you open
5 yourself up to criticism. That is what happens. You put
6 yourself on television, you become open to all kinds of
7 scurrilous things. I don't know that everything that
8 Mr. Brennan did is scurrilous. The fair use exception
9 deals with transference of work, and it deals with the
10 use of copyrighted material for criticism and comment.
11 This includes outright criticism and comment, and it
12 includes parody, satire, and burlesque. The fair use
13 exception to the copyright law is embodied in U.S. code
14 title 17 section 107. It lists a number of factors that
15 we are to look at. But, you need to keep in mind that the
16 purpose of the fair use exception is to -- I will read it
17 -- "The purpose of the fair use exception is to allow
18 purposeful use of copyrighted material for purposes such
19 as criticism, comment, news reporting, teaching,
20 scholarship, or research. No one would suggest that
21 anything Mr. Brennan did was scholarship or teaching, but
22 he did criticize and comment upon the work of Mr. Yarid.

23 There is a case that Judge Moon decided out in t
24 western district. I didn't bring a copy to the bench with
25 me, but it deals with a fellow who was a minister or a

1 dean of some sort at Liberty University, who had claimed
2 to be an evangelical Christian, and had converted to that
3 from Islam. And it turned out that that was not true.
4 Someone essentially took this fellow's lectures, comments,
5 and so forth and publicized them with a statement
6 essentially, that this fellow was a liar. He didn't even
7 modify much of the dean's commentary or lectures, writings
8 and so forth. But the point was that that kind of use or
9 criticism and comment is allowed under the fair use
10 doctrine.

11 The first factor we look at is the purpose and
12 character of the use, including whether it is commercial.
13 Well, the purpose and character of the use is to belittle,
14 and to belittle Mr. Yarid to suggest that he has not much
15 talent as a television actor and producer or radio actor
16 and producer; that his ideas are not well thought out, and
17 that his humor is not funny. And that his program is
18 essentially juvenile.

19 And the character of the use is to essentially add
20 additional things that are themselves juvenile, as
21 Mr. Yarid said, vile in some instances, often gross, but
22 always critical and insulting to Yarid and his work.
23 There is at least one instance where Mr. Yarid suggests
24 that Mr. Brennan's use is commercial, but that is really
25 not the decisive factor. The decisive factor, if this is

1 commercial at all -- I doubt that it is -- is that this is
2 a criticism of Mr. Yarid and his program. This is a
3 parody of Mr. Yarid and his program.

4 The next factor I have to look at is the nature of
5 the copyrighted work. Well, the copyrighted work in some
6 instances is itself a parody of professional television
7 and is essentially an amateur take on world events, on
8 social issues, and an attempt to make fun of some things
9 that people take seriously, like the anal exam on Mike
10 Tyson. You know, that was not the most tasteful part of
11 the thing that has ever been on television, and it is an
12 attempt at pretty low humor.

13 And the next factor is the amount of the portion used
14 in relation to the work as a whole. That we don't have
15 any evidence on. Mr. Yarid's programs apparently go on
16 for quite some length, and I take it that Mr. Brennan
17 copied substantial portions of it.

18 Finally, we have the effect on the potential market
19 or value of the copyrighted work.

20 Mr. Yarid, whatever value he got from the program
21 apparently he got when he aired them, because people paid
22 money to advertise on those shows. But as to what is left
23 of them, there is no commercial value to Mr. Yarid's
24 program.

25 So weighing all the factors I find that what

1 Mr. Brennan did was a fair use.

2 I would point out as well on another issue, Mr. Yarid
3 has offered no proof of damages in this case, which is
4 also fatal to his claim. And he has not made an election
5 to pursue statutory damages. There is no demonstration of
6 what profits he should get from, if any, from
7 Mr. Brennan's use. So, that is another fatal flaw with
8 the case.

9 I will request the court reporter to transcribe my
10 ruling in this case so that Mr. Yarid will have it.

11 Mr. Yarid, I am going to dismiss your case.

12 I am sorry. I think that -- I understand how mad you
13 are about this. Because what happened here is just not
14 very -- it is just not right.

15 Our society is a harsh society. Brennan is a
16 thoughtless fool. But, these are the things that you have
17 to put up with when you are in the public eye. You look
18 at the comments people make about Johnny Carson and people
19 like that. It is pretty awful. They made it about him
20 during his career. And the same is true of all
21 performers. I am sorry that happened to you, but I think
22 that it is an instance of fair use. And if you are going
23 to take anything away from this, Mr. Yarid, it ought to be
24 this. Our country appreciates free speech. The First
25 Amendment is first for a reason. It says that you can say

1 what you want to and nobody can change that.

2 Unfortunately it also says that other people can say
3 what they want to. And they said things about you that
4 were cruel and mean in this case. But, you know, it is
5 one of the things that makes our country different than
6 Russia.

7 And you have engaged in what some Justice called the
8 marketplace of ideas. And I am sorry that you were
9 criticized, but that is the way our country works.

10 Mr. Yarid, I wish you good luck, sir.

11 This case will be dismissed.

12 Thank you very much.

13 Let's adjourn court.

14

15 HEARING ADJOURNED

16

17 CERTIFIED TRUE AND CORRECT TRANSCRIPT

18

19 /s/ _____

20

21 Gilbert F. Halasz, OCR

22 Official Court Reporter

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